



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

EASEMENT INFORMATION PACKET



This packet contains information on the Historic Preservation Easement Program administered by the Virginia Department of Historic Resources and describes the process for conveying an easement to the Virginia Board of Historic Resources. Additional information about the management of the easement program may be found in the *Easement Program Policies*.

HISTORIC PRESERVATION EASEMENTS IN VIRGINIA

The Virginia Department of Historic Resources ("VDHR") provides this summary of conservation and historic preservation easements for informational purposes only. The VDHR does not give legal or tax advice and recommends that donors consult their attorney, accountant, and/or tax advisor regarding the legal and tax implications of a gift of easement.

Virginia's historic landmarks are irreplaceable resources of the Commonwealth. They are tangible reminders of the state's rich history and traditions. Through the easement program, historically significant buildings, sites, battlefields, and properties are protected from destruction or inappropriate change, thus ensuring that they will continue to enrich and enlighten future generations of Virginians. Legislation establishing Virginia's easement program was passed by the General Assembly in 1966, the same year Congress passed the National Historic Preservation Act. The Board accepted its first easement in 1969. Today Virginia's program is one of the largest in country and is viewed as a model nationwide. The program is designed to protect historic properties that are listed in the Virginia Landmarks Register or Virginia battlefields associated with the Civil War, Revolutionary War, or War of 1812.

FREQUENTLY ASKED QUESTIONS

What is a Conservation Easement?

A conservation easement, which includes historic preservation and open-space easements, is a legal land preservation agreement between a landowner and a governmental or non-profit conservation organization (land trust) that protects the conservation values of a property, through perpetual limits on future development of the land. The easement may also include special protections for historic, cultural, natural, scenic, or open-space resources on the property. Most often, landowners voluntarily donate easements and receive some federal or state tax benefits for their charitable gift.

Every easement is unique. The terms and provisions are negotiated between the landowner and the holder of the easement. The easement is perpetual and binds all future owners of the property. Except for rights specifically relinquished in the easement deed, the landowner continues to own, use, and control the land. For example, land ownership is often described as a bundle of sticks. The entire bundle is fee simple title to the property. The owner of that bundle can give or sell a few sticks without losing or compromising his or her ownership of all of the other sticks in the bundle. Donation of a conservation easement is a complex process. It requires consultation with legal and tax counsel to ensure compliance with State and Federal tax code and guidelines for conservation easements.

What is a Historic Preservation Easement?

An historic preservation easement is a type of conservation easement. The name has less to do with the way the agreement works than with the kind of resource it protects.

What is the difference between the Virginia Board of Historic Resources (“Board”) and the Virginia Department of Historic Resources (“VDHR”)?

The Board is authorized to acquire and hold easements and VDHR is the agency charged with administering them on behalf of the Board.

What legislation in Virginia authorizes conservation easements?

- A. Virginia Code § 10.1-2204 authorizes the Board to hold easements on historic properties listed on the Virginia Landmarks Register as well as Virginia Battlefields. Easements held by the Board are administered by staff at the VDHR.
- B. Virginia Code § 10.1-1701 (Virginia Open-Space Land Act) declares that the preservation of open-space land serves a public purpose, and authorizes any public body to receive easements in gross for the protection of such land.
- C. Virginia Code § 10.1-1009 (Virginia Conservation Easement Act) authorizes charitable organizations to hold non-possessory interests in real property for the purpose of conservation.
- D. Constitution of Virginia, Article XI: [I]t shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historic sites and buildings. Further, it shall be the Commonwealth’s policy to protect its atmosphere, lands, and water from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth...

What properties are eligible for the VDHR Easement Program?

Throughout Virginia, properties with significant historic, open-space, scenic, or natural values are eligible for the donation of an easement. All easements conveyed to the Virginia Board of Historic Resources must meet **one** of the following criteria:

- A. Property is individually listed in the Virginia Landmarks Register (VLR)
- B. Property is a contributing resource within a VLR-listed historic district
- C. Property is a Virginia battlefield or site identified with a priority rating in one of the following reports issued by the National Park Service's American Battlefield Protection Program: “Report on the Nation's Civil War Battlefields (1993),” as amended (available at the following web link: <http://www.nps.gov/abpp/battles/tvii.htm>), or “Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States (2007),” as amended (available at the following web link: http://www.nps.gov/abpp/Rev1812_Final_Report.pdf).

How do Conservation Easements work in Virginia?

In Virginia, the state-established Virginia Outdoors Foundation holds the vast majority of open-space easements, although other public entities such as the Virginia Board of Historic Resources (as administered by VDHR), the Virginia Department of Forestry, and the Virginia Department of Conservation and Recreation also hold easements. Additionally, a number of non-profit land conservation organizations, also known as land trusts or land conservancies, hold easements throughout the Commonwealth. These include land trusts such as the Piedmont Environmental Council, the Land Trust of Virginia, the Northern Virginia Conservation Trust, the Eastern Shore Land Trust, and the Williamsburg Land Conservancy among others. In general, easements held by these conservation organizations in Virginia will incorporate the following:

- Negotiation of easement terms between the landowner and the individual easement holder
- Limitations on subdivision and further development of the property
- Restrictions or limitations on new construction. Depending on the size and features of the property, the owner may retain the right to build additional structures or subdivide the property
- Perpetual protection of historic, open-space, scenic, agricultural, or natural values of a property

What is the difference between an historic preservation easement and a façade easement?

Historic preservation easements are sometimes distinguished from façade easements, which generally protect only the exterior of a historic building. In most cases, the Virginia Board of Historic Resources only accepts easements that protect both the exterior and interior of all significant historic buildings and structures on a property. However, some easements protect only the exterior in its entirety. The extent of the protection depends on the resource itself.

What is the process for conveying an historic preservation easement to the Board of Historic Resources (“Board”)?

Upon receipt of a completed Easement Application Form and supporting documentation, VDHR easement staff will notify the landowner and the easement offer will be placed on the next meeting agenda of the Easement Acceptance Committee. VDHR has an Easement Acceptance Committee that considers each easement offer. The Committee reviews the historic significance and integrity of the property as well as its character defining architectural, archeological features and/or setting and landscape features. This Committee meets on a bi-monthly basis.

Once the Easement Acceptance Committee recommends approval, the offer is presented to the Board for approval. The Board meets on a quarterly basis in March, June, September, and December. After the Board formally approves the easement offer, the easement deed can be signed and recorded. This process takes an average of at least twelve months. An outline of this process is included at the end of this document as Appendix A and easement staff contact information is available as Appendix B.

EXISTING CONSERVATION EASEMENTS ADMINISTERED BY VDHR:

How do I know if a property is protected by an historic preservation easement?

Conducting a title search at the local lands records office will help you determine if the property is protected by an historic preservation easement. All easements held by the Board are recorded with the land records of the city or county in which the parcel of land subject to the easement is located. VDHR also regularly notifies city and county tax assessors and planning and zoning offices of its easements. The Virginia Department of Conservation and Recreation also maintains a Conserved Lands Database of all easements held by various land trusts and agencies in Virginia located online at:

http://www.dcr.virginia.gov/land_conservation/tools02a.shtml

What is the difference between the Virginia Board of Historic Resources (“Board”) and the Virginia Department of Historic Resources (“VDHR”)?

The Board is authorized to acquire and hold easements and VDHR is the agency charged with administering them on behalf of the Board.

Who is the VDHR Easement Staff?

VDHR’s Easement Program currently contains the following staff members: Easement Program Manager, Easement Program Coordinator, Easement Program Archaeologist, Easement Program Architect, Easement Program Stewardship Coordinator, and Easement Program Stewardship Counsel. Easement staff also works closely with student interns during the spring and summer months.

Where do I find the Restrictions in an Easement Deed?

VDHR recommends that a potential buyer of an easement property carefully read through the easement document with his or her attorney. For VDHR easements, the restrictions are generally found in the numbered paragraphs located in the second half of the document. Please contact VDHR easement staff if you have any questions about the meaning or intent of the language.

What steps do I need to take to obtain permission to complete a project that requires “prior written review and approval” under the terms of the Easement?

Project review occurs on a daily basis within the VDHR easement program. Property owners generally contact VDHR easement staff to request review of proposed improvements to their easement property and complete a brief form known as the Project Review Application Form. The content of such proposals and application forms vary widely from replacement of existing building elements to additions and new construction. Each easement document contains information addressing improvements or modifications specific to the property it covers. Staff decisions are guided by (i) the terms of the individual easement as well as (ii) by *The Secretary of the Interior's Standards for the Treatment of Historic Properties*. All proposed work must be consistent with these aspects in order to receive written approval.

How long will the review process take?

The length of the review time depends on the nature and scope of the project. Each easement project review request is assigned to an individual staff member, most often the Easement Program Architect or Easement Program Archaeologist, for review. The staff member will remain in direct contact with the landowner about the status of the project. Less complex projects are usually turned over in one to two weeks. Many of VDHR's easements require the Department to issue a response to the landowner within thirty days.

What is the difference between project review at the state and local levels?

Keep in mind that approval per the terms of the easement will be different from that required at the local level. It is important to note that these are distinctly different processes. VDHR easement staff works diligently with local municipalities to coordinate our comments in the interest of efficiency and consistency. Ultimately, it is the responsibility of the easement property owner to initiate any required levels of review.

For those properties within a locally designated historic district, there are often two separate design review processes through which a property owner must navigate:

Historic District Review occurs at the local level. This is typically conducted by an appointed committee empowered by a local ordinance to maintain the architectural and historic integrity of the physical fabric of a specific district. Such committees rely upon established design guidelines as the basis for individual project review. Review is limited to exterior changes, often including site work and landscaping. The successful project proposal receives a Certificate of Appropriateness (or a similar document) as part of the local permitting process.

Easement Program Review occurs at the state level for those properties subject to an easement held by VDHR. It is conducted by Easement Program staff at VDHR. Change is inevitable. No property is static. VDHR easements guarantee that changes are carefully thought out and appropriate to the historic character and setting of the properties.

I want to replace one piece of exterior wood siding on my house because it is starting to rot. Do I need to contact VDHR for approval? I need to upgrade the plumbing under my kitchen sink. Do I need to contact VDHR for approval?

If you plan to replace the portion of the wood that is rotted with new wood siding that matches in profile and dimension, this is considered "replacement in-kind" and no written VDHR approval is necessary. If you are contemplating a different type of siding, you would need to consult your individual easement and contact VDHR for approval. Plumbing changes typically do not require review and approval unless the change will impact other historic fabric or result in a visual impact on the interior or exterior (examples include the introduction of a new pipe outside of an existing cabinet space or a new pipe/duct penetration through an exterior wall).

My Easement Deed contains a provision about archaeological sites and features. What type of ground disturbance will trigger archaeological survey?

If your property includes known archaeological sites, the survey requirement would be triggered by any ground-disturbing activity in the area containing the site(s). Generally accepted agricultural activities are exempt from this requirement. Otherwise, any project that involves significant ground disturbance may result in a request for archaeological investigation. Significant ground disturbance would include such activities as grading, digging for a cellar, footers, or foundation, excavating to install equipment such as a geothermal bed, or road construction. Generally speaking, agricultural planting and harvesting in areas that have been in agricultural use, as well as domestic gardening, is not considered significant ground disturbance. VDHR will work with easement property owners to restrict requests for archaeological survey only to those absolutely necessary to protect the historic integrity of the property.

Please be aware that all archaeological survey on an easement property must be performed by or under the supervision of an archaeologist who meets the Secretary of the Interior's professional qualifications standards for archaeology. Costs for archaeological survey vary widely depending on the amount of work to be done. VDHR cannot provide cost estimates, but can provide property owners with a list of professional archaeologists working in Virginia who meet the Secretary's Standards. VDHR recommends that any property owner considering archaeological survey obtain at least three independent quotes before contracting for any such work, and staff is willing to review proposals, quotes, and any other information and provide advice to the property owner.

Will Easement Staff be required to inspect or visit my property?

Regular monitoring and inspections are part of VDHR's stewardship responsibility as a qualified holder of historic easements. Prior to a request for a visit, you will receive advance notification, in most cases via U.S. mail. The inspection itself is a visit intended to monitor and document the current condition of the easement property, specific to the individual easement provisions. This is done through visual observation and photographic documentation. Easement staff will compile this information into a brief written report for owner review. The report is added to the property file to assist VDHR in future stewardship efforts. This visit is also a good opportunity to request technical assistance from easement staff. Easement staff is available for technical assistance to all property owners, no matter what the magnitude of the proposed scope of work.

Does the general public have the right to access my property?

No, the general public at large does not have the right to access your property. However, easements held by the Board of Historic Resources will include a public access provision for opening the property to the public on a limited basis. In order for an easement to be deductible for tax purposes, the Internal Revenue Code and U.S. Treasury Regulations require that there be a "direct public benefit" associated with the Deed of Gift of Easement. *VDHR Easement Program Policy #9: Easement Requirements*, adopted by the Board, notes that in order to derive maximum public benefit from properties under easement, it is the policy of the Board and VDHR to include provisions for public access in the easement document.

Can I sell a property subject to an easement held by the Board?

Yes. Many of Virginia's privately-owned easement properties have changed hands since the easement was donated. The easements help ensure that the subsequent owners respect various historic characteristics of the properties. The language of the easement usually requires the property owner to notify VDHR regarding any change or transfer in ownership.

If my property is subject to an easement held by the Board, can I participate in the Virginia Rehabilitation Tax Credit Program?

Yes. The owner of a property subject to an easement held by the Board may participate in the Virginia Rehabilitation Tax Credit Program. The project will be reviewed by an Easement staff member according to the requirements of the VDHR's Easement Program and Rehabilitation Tax Credit Program.

If I donated an easement and claimed a Land Preservation Tax Credit in Virginia, can I also claim a tax credit under the Virginia Rehabilitation Tax Credit Program?

You may or may not be able to claim a tax credit under the Virginia Rehabilitation Tax Credit Program. Any building or improvement that serves as the basis, in whole or in part, of a Virginia Land Preservation Tax Credit under the Virginia Conservation Easement Act, **cannot** also serve as the basis for a historic rehabilitation tax credit for a period of five years following the donation on which the credit is based. This rule is property specific and not owner specific. If the property is sold by the owner who granted the easement, the new landowner is still subject to the five-year exclusivity rule. VDHR recommends landowners contact the Virginia Tax Department for additional information on this rule.

I purchased a property subject to an easement held by the VBHR and granted by the previous landowner three years ago. The previous landowner claimed a Virginia Land Preservation Tax Credit for the easement donation, which included the historic manor house as part of the basis for the tax credit. The manor house needs some rehabilitation work. Am I able to claim a credit now if I participate in the Virginia Rehabilitation Tax Credit Program?

No. Any building or improvement that serves as the basis, in whole or in part, of a Virginia Land Preservation Tax Credit **cannot** also serve as the basis for a historic rehabilitation tax credit for a period of five years following the donation on which the credit is based. The new landowner must wait until the five year period is complete before claiming credits under the Rehabilitation Tax Credit Program.

TAX BENEFITS OF HISTORIC PRESERVATION EASEMENTS

The VDHR does not give tax advice and recommends that donors consult their attorney, accountant, and/or tax advisors regarding the tax implications of a gift of easement. This summary is provided for informational purposes only. A gift of a qualified conservation easement in perpetuity may qualify as a non-cash charitable gift which may yield a deduction for federal income tax purposes and a credit for state income tax purposes. An independent qualified appraiser must establish the value of the easement that is primarily based on the value of the development rights relinquished by the donor. Once that value is established, it becomes the basis for calculating tax benefits.

SUMMARY OF TAX BENEFITS

1. Federal Charitable Gift Deduction:

Section 170(h) of the Internal Revenue Code (IRC) establishes the criteria for a “qualified gift of a conservation easement.” According to the federal tax code, certain contributions for “certified historic structures” or “historically important land areas” may qualify as a gift of conservation easement. The federal tax deduction for tax year 2016 and subsequent years is limited to 50% of adjusted gross income for individual taxpayers, the unused portion of which may be carried forward for a period of fifteen years or until the donation is fully expended, whichever comes first. IRS Form 8283 must be filed to obtain this deduction.

Special rules and limitations on deductions for historic resources:

A. *Certified Historic Structures in Registered Historic Districts:* the Pension Protection Act of 2006 (Public Law 109-280) changed the definition of a “certified historic structure” under Section 170(h) of the IRC to eliminate the reference to non-building structures or land areas in registered historic districts. Previous law authorized tax deductions for charitable contribution of conservation easements given for preservation of a “historically important land area” or “certified historic structure.” (IRC Section 170(h)(4)(A)(iv)). Certified historic structures had been defined as buildings, structures, and land areas that are (1) listed in the National Register of Historic Places and (2) located in a registered historic district and certified to be of historic significance to the district. The change made by Public Law 109-280 amends the definition of “certified historic structure” to strike the words “structure” and “land area” in the description of eligible historic resources located in a registered historic district—narrowing the definition of certified historic structures in registered historic districts to only include “buildings.” Deductions that preserve non-building structures or land areas that are individually listed on the National Register of Historic Places (IRC Section 170(h)(4)(C)(i)) or those that qualify under the separate deduction criteria for “historically important land areas” are still allowed.

B. *For easement donors that have participated in the Federal Rehabilitation Tax Credit Program:* the Pension Protect Act of 2006 also contains a provision that reduces the deduction for easement donations involving properties for which the taxpayer has benefitted from the Rehabilitation tax credit within the previous five years. The percentage based

reduction is to be equivalent to the proportion of tax credits allowed to the taxpayer over the previous five years compared to the fair market value of the building at the time of the easement donation (see Section 1213(d) of Public Law 109-280).

2. Virginia Land Preservation Tax Credits:

The “Virginia Land Conservation Incentives Act of 1999” (see Section 58.1-510 through 58.1513 of the Code of Virginia, as amended), provides Virginia taxpayers who donate a conservation easement with a Virginia state income tax credit equal to 40% of the value of the easement. The tax credit will offset or reduce calculated tax liability and results in a dollar-for-dollar reduction in tax liability. The amount of the credit used by any one taxpayer may not exceed \$20,000 for taxable years 2015 and 2016 and \$50,000 for taxable year 2017 and each taxable year thereafter. Any unexpended portion may be carried forward for the next thirteen consecutive taxable years or transferred to another Virginia taxpayer. The Virginia Department of Taxation does impose a transfer fee on the sale of land preservation tax credits. This fee is calculated as either 2% of the value of the donated conservation interest or 5% of the face value of the transferred credits.

Land preservation tax credits in excess of \$1 million or more will be issued only if the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation (DCR) based on criteria adopted by the Virginia Land Conservation Foundation. Pre-filing review of the conservation value is available through DCR. There is a \$75 million limit on the amount of tax credits that the Department of Taxation may issue in each calendar year. Form LPC-1 must be filed with the Department of Taxation for registration of credits and Form LPC-2 for transfer of credits. For an easement conveyed on or after July 1, 2015, the LPC-1 application must be filed with the Department of Taxation by December 31st of the year following the calendar year of the conveyance or the credit will be disallowed. See the Virginia Department of Taxation website for additional information:

<http://www.tax.virginia.gov/content/land-preservation-tax-credit>

Special rules and limitations on tax credits for historic resources:

- A. No more than 25% of the total credit shall be for reductions in value for any structures or other improvements to the land.**
- B. Additionally, any building that serves as the basis, in whole or in part, of a tax credit under the Virginia Land Conservation Incentives Act, cannot also serve as the basis for a historic rehabilitation tax credit for a period of five years following the donation on which the credit is based. (see Code of Virginia, Section 58.1-513 and 58.1-339.2)**

3. Estate Tax Deduction:

Placing a conservation easement on your property may reduce the value of the land, thus reducing the estate taxes, often substantially. Under Section 2031(c) of the Internal Revenue Code if a landowner donates a conservation easement, his or her heirs can exclude up to 40% of the remaining value of the land (but not improvements on the land) from the estate taxes owed. The exclusion is capped at \$500,000 is reduced if the conservation easement reduced the land's

value by less than 30% at the time of the contribution. To qualify the easement must prohibit all but “*de minimis* commercial recreational use.”

4. Local Property Taxes:

Tax assessors are required by law to take an easement into account in valuing your property (see Code of Virginia 10.1-1011 and 58.1-3205). In Virginia counties where use value taxation is in place, land subject to a conservation easement is usually entitled to taxation at use value rates. However, all dwellings, buildings, and structures will still be taxed at their fair market value.

ADDITIONAL INFORMATION:

Federal and State Rehabilitation Tax Credits: http://www.dhr.virginia.gov/tax_credits/tax_credit.htm

Virginia Land Conservation Foundation:

http://www.dcr.virginia.gov/virginia_land_conservation_foundation/

Virginia Battlefield Preservation Fund Grants:

http://www.dhr.virginia.gov/homepage_general/finance.htm

Land and Water Conservation Fund (National Park Service):

<http://www.nps.gov/lwcf>

Virginia Department of Taxation

<http://www.tax.virginia.gov/content/land-preservation-tax-credit>

APPENDIX A

PROCESS FOR CONVEYING AN HISTORIC PRESERVATION EASEMENT TO THE VIRGINIA BOARD OF HISTORIC RESOURCES

The following outline describes the basic steps for conveying an easement to the Virginia Board of Historic Resources ("Board") and is only intended to be a summary overview. Please note that the timeline for donation of an easement may vary, but allow for 12-18 months depending on the complexity of the project and applicable grant funding sources.

1. PLANNING AND GATHERING INFORMATION:

Landowner contacts easement staff at the Virginia Department of Historic Resources ("VDHR") to request information and discuss the Easement Program and donation process. Staff conducts research to confirm the historic significance of the property and its eligibility for the easement program as well as identify associated conservation values.

VIRGINIA LANDMARKS REGISTER STATUS

- Staff confirms property is individually listed on the Virginia Landmarks Register; and/or
- Staff confirms property is listed as a contributing resource to an historic district listed on the Virginia Landmarks Register.
- If the property is not listed on the Virginia Landmarks Register, staff will refer landowner to a VDHR regional office for information on the nomination and listing process.

BATTLEFIELDS

- Staff confirms property is within the boundaries of a Virginia Civil War battlefield with a priority rating identified in the *Report on the Nation's Civil War Battlefields (1993)*, as amended; and/or
- Staff confirms property is a Virginia Revolutionary War or War of 1812 site with a priority rating identified in the *Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States (2007)*, as amended.

Staff will also search VDHR's online cultural resource inventory (VCRIS) and archives files for all records of historic and archaeological resources identified on the property.

Staff provides landowner an Easement Information Packet, containing the following:

- Cover letter verifying historic significance of property
- Written overview of Easement Program
- Information on financial incentives and donation process
- Easement Application Form
- Easement Program Policies
- Easement Acceptance Committee & Board meeting schedule

To determine whether a conservation easement is a good fit for you and your property, VDHR strongly recommends that landowners consult with an attorney and/or tax advisor who has experience with conservation easements.

2. PRELIMINARY SITE VISIT (OPTIONAL):

At staff discretion, a preliminary site visit may be made to discuss the program with a potential donor, review the standard easement template, and tour the property. Staff may take digital photographs while on site for presentation to Easement Acceptance Committee and the Board.

3. CONSIDERATION OF EASEMENT:

All easements held by the Board are administered by the Easement Program at VDHR, which serves as staff to the Board. Easement applications are first reviewed by staff to ensure that the property meets the Board's legal requirements and the application includes the information necessary for formal review. An application is then considered by the Easement Acceptance Committee ("EAC"), comprised of senior staff of different professional disciplines from various divisions within VDHR. The EAC makes recommendations to the Board regarding the acceptance of an offer of easement. See *Easement Program Policy #2: Criteria for Acceptance of Easements* for a detailed description of the criteria used by the EAC and Board when evaluating an offer of easement.

EASEMENT APPLICATION FORM

- Landowner submits completed, signed, and dated Easement Application Form with all required supporting materials **at least thirty (30) calendar days** prior to Easement Acceptance Committee meeting. Easement Program staff works with the property owner or their designated agent to ensure that the application is complete.
- Staff processes application, photographs, and maps, and reviews state and local planning documents (Virginia Outdoors Plan, locality Comprehensive Plan, VDOT Six-Year Improvement Plan) to identify supporting policies and potential conflicts.
- Staff reviews title and other legal considerations, including title search and all associated deeds and instruments, plat of boundary survey and/or accurate legal description, copies of all current leases, licenses or other rights held by third parties to access or use the property being offered for easement, copies of all encumbrances and liens, copies of grant agreements, and information regarding environmental conditions, including an environmental assessment (if applicable).
- Staff informs the landowner and the EAC of the following circumstances: clouds on title; previously conveyed rights, such as mineral rights or covenants; current plats of subdivision of the property including recorded encumbrances or dedications for such subdivision; easements and/or installed infrastructure or improvements for a past, present or future land use that are incompatible with the easement; prior land uses that irreversibly damaged the historic resources sought to be protected by the easement or that irreversibly altered the historic landscape.
- Staff confirms whether grant funding sources (e.g. American Battlefield Protection Program, Virginia Battlefield Preservation Fund) will be utilized for the transaction and whether the Section 106 review process will be applicable.

EASEMENT ACCEPTANCE COMMITTEE REVIEW

- Upon receipt of a completed application form, including all required supporting materials, the easement offer is placed on the agenda for the next regularly scheduled meeting.
- Staff presents the application to the EAC, and the Committee: (i) confirms the subject property meets the criteria for inclusion in the Easement Program; (ii) evaluates the conservation values associated with the property; and (iii) determines whether the

proposed easement terms are consistent VDHR's and the Board's mission and with the Easement Program Policies.

- The EAC may take one or more of the following actions: (i) recommend approval of the easement offer as proposed; (ii) recommend that any approval be conditioned on specific requirements or actions; (iii) not recommend acceptance of the easement offer as proposed; or (iii) defer making a recommendation where insufficient information has been provided by the property owner or his/her designated agent, or where conditions affecting the property may require prior resolution.
- Staff informs owner of Committee recommendation. Written correspondence to owner includes summary of proposed easement provisions and any conditions for approval recommended by the EAC.
- After consideration by the EAC, staff discusses with donor any modifications of the easement terms or issues with the application identified by the Committee.
- Reconsideration by the EAC (if applicable).
- Landowner prepares and signs Letter of Intent indicating their desire to donate an easement prior to Board review (if applicable).

BOARD OF HISTORIC RESOURCES REVIEW

- Per evaluation and recommendation from the EAC, the easement offer is added to the agenda for the next quarterly Board meeting.
- Easement Program staff will notify the property owner of the meeting date and location and will provide information regarding the agenda. A property owner whose offer will be considered at the meeting may attend the meeting and may request permission to address the Board regarding the easement offer and/or the EAC's recommendation.
- At the public Board meeting, Easement Program staff will present the offer, describe the property's historic significance and the formal documentation of that significance, highlight any special features of the property, specify any reserved rights, and address the EAC's recommendations, including any recommended conditions of approval.
- The Board may take one of the following actions, including, but not limited to: (i) recommend approval of the easement offer as proposed; (ii) recommend that any approval be conditioned on specific requirements or actions; (iii) not recommend acceptance of the easement offer as proposed; or (iii) defer making a recommendation where insufficient information has been provided by the property owner or his/her designated agent, or where conditions affecting the property may require prior resolution.
- Staff informs the owner of the Board's decision. Written correspondence to owner documents approval of an easement offer by the Board, including any conditions for approval as well as a sunset clause, or a timeframe within which the easement must be recorded. Standard approvals are valid for two calendar years from the date of written approval by Easement Program staff.
- Reconsideration by the Board (if applicable).

4. EASEMENT DRAFTING AND NEGOTIATION:

- Initial draft deed of easement prepared by staff based on current standard template, proposed reserved rights, grant funding requirements (if applicable), and any conditions

for approval imposed by the Board. Draft easement is circulated for internal staff review. Once reviews are complete, draft easement is provided to landowner and landowner's attorney.

- Staff notifies county/locality to confirm that placing a perpetual conservation easement on the property is consistent with the Comprehensive Plan.
- Landowner provides VDHR with comments and modifications on draft deed of easement.
- Revised draft deed of easement and title work are reviewed by Easement Program legal counsel and/or Office of the Attorney general.
- Revised draft deed of easement reviewed by grant funding organization (if applicable).
- Landowner obtains subordination for any mortgages, leases, or other liens.
- Appraisal Summary provided to VDHR 30 days in advance in recordation and completed IRS Form 8283 provided to VDHR for review (if applicable).

5. BASELINE DOCUMENTATION:

- A baseline documentation report is required for every easement. This study documents the condition of the property at the time of the easement and describes the features and conservation values that are the subject of the easement.
- Staff schedules a site visit to the property within six months of easement recordation to obtain baseline documentation. Documentation will incorporate generous photographic coverage of property, including general views, property boundaries, exteriors of all buildings and structures on property, and interior views of all principal spaces in historic buildings.
- The draft Baseline Documentation Report is sent to owner for review. Landowner provides VDHR with comments and modifications on draft Baseline Documentation Report.
- Staff prepares final report for signature. The landowner (grantor) must sign the acknowledgment page stating that grantor agrees that the baseline documentation accurately depicts the appearance and condition of the property and provide original to VDHR.

6. EASEMENT RECORDATION:

- Once final easement draft is approved by owner, owner's attorney, grant funding organization (if applicable) and VDHR staff, final draft is signed by owner and notarized.
- Executed deed of easement is received from grantor (owner) and is signed by VDHR Director on behalf of Board.
- Original executed deed of easement is sent by landowner's attorney or by VDHR to the Circuit Court Clerk's office for recordation.
- A copy of the recorded deed of easement is provided to grantor (owner) by VDHR.
- The original recorded easement is archived according to recordkeeping policies established by the Board and VDHR.
- Gift acknowledgement letter sent to grantor (owner) by VDHR on behalf of Board (if applicable).
- VDHR signs completed IRS Form 8283 (if applicable).

APPENDIX B

VDHR EASEMENT STAFF CONTACT INFORMATION

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Contact for easement stewardship and legal review

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Contact for review of projects on easement properties

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Contact for new easement donations for battlefield and archaeological properties

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Contact for new easement applications statewide and general easement program questions

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Contact for easement monitoring and inspections or stewardship of easements

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Contact for general easement program questions